UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

JTH TAX, INC. d/b/a LIBERTY TAX SERVICE,

Plaintiff,

Civil No. 2:07cv170

v.

KENYA WHITAKER AND EASY SOFTWARE SOLUTIONS, LLC.,

Defendants.

Declaration of Kathleen Curry

Pursuant to 28 U.S.C. § 1746, I, Kathleen Curry declare under penalty of perjury that the following statements are true and correct:

1. I am over the age of eighteen (18) years and am fully competent to testify to the matter stated in this declaration. This declaration is based upon my personal knowledge, Liberty's corporate and business records, and information available form Liberty's employees and agents.

2. I have served as the Vice President of Legal at JTH Tax, Inc. d/b/a Liberty Tax Service ["Liberty"] since July 1997.

3. Attached hereto is a true and correct copy of the letter of termination sent to Kenya Whitaker on February 6, 2007, terminating her franchise agreements with Liberty.

4. I live on the Eastern Shore of Virginia and work at the Liberty headquarters in Virginia Beach, Virginia. I have two small children. I normally work in the office only two days per week. My husband works full time. Travel to Texas for a trial would be extremely inconvenient.

Dockets.Justia.com

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 15 day of May 2007.

Kathleen Curry

February 6, 2007

Easy Software Solutions LLC
Kenya Whitaker
3921 Dural Drive
Carrolton, TX 75010

Re: Termination of Franchise Agreement

Dear Ms. Whitaker,

This letter is to advise that effective immediately the franchise agreement for the territory known as TX066 is terminated pursuant to paragraph 8(b)viii of the franchise agreement. This termination is based upon your failure to fail to use the software and electronic filing services we provide or recommend.

This letter is to further advise that since you are now terminated you are obligated to comply with all of the post-termination provisions of your franchise agreement, including but not limited to the following:

a. Remove all Liberty signs from all of your offices and other premises; and
b. Stop identifying yourself as a Liberty Tax franchisee, never hold out as a former Liberty Tax franchisee and cease, and not thereafter commence, use of any of the Marks or any marks which are likely to be confused with the Marks; and
c. Stop using all literature received from us and other items bearing the Marks; and
d. Pay to us all amounts owing to us; and
e. Transfer to us all telephone numbers, listings and advertisements used in relation to the Franchised Business and deliver to us copies of such documents of transfer; and
f. Deliver to us all copies, including electronic copies, of lists and other sources of information containing the names of customers who patronized the Franchised Business; and
g. Deliver to us all customer tax returns, files, records and all copies thereof; and
h. Deliver to us the copy of the Operations Manual and all updates which we loan to you; and
i. Cancel all fictitious name listings which you have filed for use of any of the Marks; and
j. Adhere to the provisions of the post-term covenants not to compete and not to solicit.

Please call your area developer or Cory Hughes at (800) 790-3863 to make arrangements to comply with the post-termination provisions of your franchise agreement. Thank you for your attention to this matter.

Sincerely,

Kathleen Curry